

UNITED STATES PATENT AND TRADEMARK OFFICE

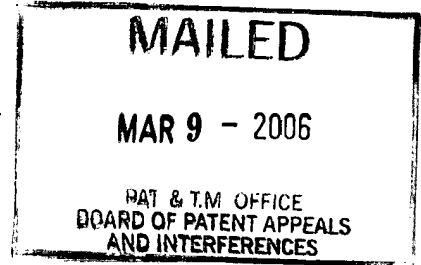
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DONALD J. STAVELY,  
K. DOUGLAS GENNETTEN,  
DAVID K. CAMPBELL and  
PAUL M. HUBEL

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Application No. 09/955,457

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on January 19, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the Appeal Brief filed August 18, 2005 does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c)(1) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not

represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(vii) *Argument*. The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

A review of the application indicates that the following appropriate section is missing from the Appeal Brief filed August 17, 2005:

- 1) "Arguments" as set forth under 37 CFR § 41.37(c)(1)(vii).

A substitute appeal that is in compliance with 37 CFR § 41.37 is required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Accordingly, it is

**ORDERED** that the application is returned to the Examiner to:

- 1) hold the Appeal Brief of August 17, 2005 defective;
- 2) to notify applicants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for the examiner to consider the substitute Appeal Brief, and if necessary, vacate the Examiner's Answer mailed November 11, 2005, and issue a revised Examiner's Answer in accordance with the new rules effective September 13, 2004; and

4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

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Application No. 09/955,457

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